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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)**

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THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN JAMES ELLIS,

Defendant and Appellant.

C059046

(Super. Ct. No. 08F00553)

A jury found defendant Ryan James Ellis guilty of assault with a firearm (Pen. Code, § 245, subd. (a)(2)),<sup>1</sup> with a true finding that he personally used a firearm in the commission of the offense (§ 12022.5, subds. (a), (d)). The jury subsequently found true the allegation that defendant had sustained a prior robbery conviction that qualified as a strike within the meaning of the three strikes law. (§ 667, subds. (b)-(i).)

Sentenced to a nine-year state prison term, defendant appeals. His sole contention is that the doubling of his sentence as a second strike based on a prior *juvenile*

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

*adjudication* violated his federal jury trial guarantee as articulated by the United States Supreme Court in *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [147 L.Ed.2d 435, 455] and *Blakely v. Washington* (2004) 542 U.S. 296, 303-305 [159 L.Ed.2d 403, 413-415].

Since the briefs were filed, the California Supreme Court has settled the issue. In *People v. Nguyen* (2009) 46 Cal.4th 1007 (*Nguyen*), the state high court rejected the type of constitutional challenges defendant raises here. Following *Nguyen*, we shall affirm the judgment.

### **PROCEDURAL HISTORY**

A recitation of the evidence is unnecessary to the resolution of this appeal. In April 2005, the juvenile court of Merced County found defendant had committed robbery in violation of section 211 and committed him to the California Youth Authority. The record of the juvenile adjudication was the sole evidence upon which the jury found the strike allegation to be true.

The trial court sentenced defendant to the middle term of three years on the assault conviction and doubled it to six years pursuant to the "second strike" provision of the three strikes law. (§ 667, subd. (e)(1).) The court then added a three-year term for the firearm enhancement, for an aggregate sentence of nine years.

## DISCUSSION

Relying mainly on *Apprendi* and *Blakely*, as well as *United States v. Tighe* (9th Cir. 2001) 266 F.3d 1187, defendant contends the use of his prior juvenile adjudication of robbery to double the base term of his prison sentence violated his Sixth Amendment right to a jury trial. He reasons that because there is no right to a jury trial in juvenile court, the judge-rendered finding of robbery could not be used to increase his sentence.

In his opening brief, defendant acknowledged that this issue was pending before the California Supreme Court in *Nguyen*. In *Nguyen*, which was decided on July 2, 2009, the Supreme Court ruled six to one that there was no constitutional infirmity in counting juvenile adjudications as strikes under the three strikes law. The court concluded that "the Fifth, Sixth, and Fourteenth Amendments, as construed in *Apprendi*, do not preclude the sentence-enhancing use, against an adult felon, of a prior valid, fair, and reliable adjudication that the defendant, while a minor, previously engaged in felony misconduct, where the juvenile proceeding included all the constitutional protections applicable to such matters, even though these protections do not include the right to jury trial." (*Nguyen, supra*, 46 Cal.4th at p. 1019.) The court reasoned that "[l]ike prior adult criminal convictions, such prior juvenile judgments do not involve facts about the current offense that were withheld from a jury in the current case, but instead concern the defendant's *recidivism*-- i.e., his or her status as a *repeat offender*--a basis on which

courts, acting without juries, traditionally have imposed harsher sentences.” (*Id.* at p. 1021.)

As an intermediate appellate court, we are bound to follow decisions of the California Supreme Court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Accordingly, under the authority of *Nguyen*, we must reject defendant’s argument and affirm the judgment.

### **DISPOSITION**

The judgment is affirmed.

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BUTZ, J.

We concur:

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SIMS, Acting P. J.

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HULL, J.